

IC 35-35

ARTICLE 35. PLEADING AND PROCEDURE

IC 35-35-1

Chapter 1. Pleas

IC 35-35-1-1

Guilty or guilty but mentally ill at time of crime; aid of counsel

Sec. 1. A plea of guilty, or guilty but mentally ill at the time of the crime, shall not be accepted from a defendant unrepresented by counsel who has not freely and knowingly waived his right to counsel.

As added by Acts 1981, P.L.298, SEC.4.

IC 35-35-1-2

Guilty plea; advertisement of rights

Sec. 2. (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the defendant:

- (1) understands the nature of the charge against him;
- (2) has been informed that by his plea he waives his rights to:
 - (A) a public and speedy trial by jury;
 - (B) confront and cross-examine the witnesses against him;
 - (C) have compulsory process for obtaining witnesses in his favor; and
 - (D) require the state to prove his guilt beyond a reasonable doubt at a trial at which the defendant may not be compelled to testify against himself;
- (3) has been informed of the maximum possible sentence and minimum sentence for the crime charged and any possible increased sentence by reason of the fact of a prior conviction or convictions, and any possibility of the imposition of consecutive sentences;
- (4) has been informed that the person will lose the right to possess a firearm if the person is convicted of a crime of domestic violence (IC 35-41-1-6.3); and
- (5) has been informed that if:
 - (A) there is a plea agreement as defined by IC 35-35-3-1; and
 - (B) the court accepts the plea;the court is bound by the terms of the plea agreement.

(b) A defendant in a misdemeanor case may waive the rights under subsection (a) by signing a written waiver.

(c) Any variance from the requirements of this section that does not violate a constitutional right of the defendant is not a basis for setting aside a plea of guilty.

As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.179-1984, SEC.1; P.L.313-1985, SEC.1; P.L.195-2003, SEC.3.

IC 35-35-1-3

Voluntary plea; factual basis

Sec. 3. (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the plea is voluntary. The court shall determine whether any promises, force, or threats were used to obtain the plea.

(b) The court shall not enter judgment upon a plea of guilty or guilty but mentally ill at the time of the crime unless it is satisfied from its examination of the defendant or the evidence presented that there is a factual basis for the plea.

(c) A plea of guilty or guilty but mentally ill at the time of the crime shall not be deemed to be involuntary under subsection (a) solely because it is the product of an agreement between the prosecution and the defense.

As added by Acts 1981, P.L.298, SEC.4. Amended by P.L.320-1983, SEC.16; P.L.179-1984, SEC.2.

IC 35-35-1-4**Withdrawal of plea; motion; requisites; procedures**

Sec. 4. (a) A motion to withdraw a plea of not guilty for the purpose of entering a plea of guilty, or guilty but mentally ill at the time of the crime, may be made orally in open court and need not state any reason for the withdrawal of the plea.

(b) After entry of a plea of guilty, or guilty but mentally ill at the time of the crime, but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty, or guilty but mentally ill at the time of the crime, for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea. The motion to withdraw the plea of guilty or guilty but mentally ill at the time of the crime made under this subsection shall be in writing and verified. The motion shall state facts in support of the relief demanded, and the state may file counter-affidavits in opposition to the motion. The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. However, the court shall allow the defendant to withdraw his plea of guilty, or guilty but mentally ill at the time of the crime, whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

(c) After being sentenced following a plea of guilty, or guilty but mentally ill at the time of the crime, the convicted person may not as a matter of right withdraw the plea. However, upon motion of the convicted person, the court shall vacate the judgment and allow the withdrawal whenever the convicted person proves that withdrawal is necessary to correct a manifest injustice. A motion to vacate judgment and withdraw the plea made under this subsection shall be treated by the court as a petition for postconviction relief under the Indiana Rules of Procedure for Postconviction Remedies. For purposes of this section, withdrawal of the plea is necessary to correct a manifest injustice whenever:

- (1) the convicted person was denied the effective assistance of counsel;

- (2) the plea was not entered or ratified by the convicted person;
- (3) the plea was not knowingly and voluntarily made;
- (4) the prosecuting attorney failed to abide by the terms of a plea agreement; or
- (5) the plea and judgment of conviction are void or voidable for any other reason.

The motion to vacate the judgment and withdraw the plea need not allege, and it need not be proved, that the convicted person is innocent of the crime charged or that he has a valid defense.

(d) A plea of guilty, or guilty but mentally ill at the time of the crime, which is not accepted by the court or is withdrawn shall not be admissible as evidence in any criminal, civil, or administrative proceeding.

(e) Upon any motion made under this section, the moving party has the burden of establishing his grounds for relief by a preponderance of the evidence. The order of the court upon a motion made under subsection (b) or (c) of this section shall constitute a final judgment from which the moving party or the state may appeal as otherwise provided by law. The order of the court upon a motion made under subsection (a) of this section is not a final judgment and is not appealable but is reviewable upon appeal from a final judgment subsequently entered.

As added by Acts 1981, P.L.298, SEC.4. Amended by Acts 1982, P.L.204, SEC.25; P.L.320-1983, SEC.17.